Moreover, in the instant case, the charter authorized the order to organize subordinate lodges "having ritualistic ceremonies," which would seem to specifically cover the use of such ceremonies in the initiation of the applicant.

Another objection made to the decision is as follows:

"There seems, however, even a stronger reason than this for non-liability of the order. The applicant either invites rough treatment in the pursuit of his own ends or he does not. If he does, the fact that this tends to the advantage of the order can make no difference. His request stands as the sole reason for his being put in the situation he occupies. He assumes the risk of the rough treatment he receives—in other words, he is guilty of contributory negligence. He may be like one who invites a fight and sues for injuries received therein.

"But suppose that under misrepresentation he incurs a greater risk than he was led to believe he would be subjected to. Then the inquiry would be, who misled him and was what he is subjected to reasonably to be apprehended from what the order prescribes in initiation?"

This would seem to go rather to the question of the liability of the subordinate lodge and its members than to that of the order. But the conclusive reason against its cogency is that one can not be guilty of contributory negligence because he consents to go through an initiation without any knowledge of the nature of the proceedings; and even if he had full knowledge of the nature of the proceedings, and assumed the risk of being injured by them, it can not be said that he assumed the risk of those in charge of them, through negligence, using a deadly electric current, instead of the harmless one contemplated by the designers of the "stunt." The analogy of the passenger and carrier is again applicable.

The question remains, is the relation between the main body and its subordinate lodges such that, in initiating an applicant for membership, the subordinate lodge is the agent of the order to the extent of conducting the ceremonies which are made by it indispensable to membership? We are inclined to think that the Alabama court correctly decided this question in favor of the plaintiff. It has been decided over and over again that the subordinate lodge is the agent of the grand lodge in the collection of dues and in the management of all the relations of the members with the grand lodge, and the collection of dues is as much a part of the business of the grand lodge, and no more so, than the initiation proceedings which it makes an indispensable condition of admission to the order.

Master and Servant—Liability to Third Person—Scope of Employment—Automobile Accident.—In Elliott *v.* O'Rourke, in the Supreme Court of Rhode Island (March, 1917, 100 Atl., 314), it was

held that where, when an automobile accident occurred, the chauffeur was returning from his father's home where he had driven the automobile at the owner's suggestion to obtain consent to drive it for the owner, the chauffeur was acting as the owner's servant and not on an independent personal mission which would defeat plaintiff's action against the owner. The court said in part:

"McMillan was a student in the Technical High School; he held a chauffeur's license, and had been accustomed, for some time, to drive his father's automobile. Mrs. O'Rourke, the defendant, considered him to be a careful driver, and he had driven her automobile on several occasions prior to the day of the accident. For these services he received no compensation. They were rendered in a spirit of friendly accommodation, he being on terms of sociability with the family. On the day of the accident McMillan called at the defendant's home in the early evening and was requested by her to take her for a drive in the automobile, which was then standing at the door. McMillan expressed his willingness to comply with the defendant's request, provided that he could first go home and inform his father and obtain his consent, whereupon the defendant told him that he could, if he wished, take the automobile for that purpose. He took the automobile, and it was on the way back from his father's house that the accident occurred.

The defendant contends that these facts show that McMillan was engaged upon an independent and personal mission and not as the servant or agent of the defendant, and therefore it was error on the part of the trial court to deny her motion to direct a verdict in her favor.

We cannot accept this contention of the defendant. She suggested and offered to McMillan the use of her automobile for the purpose of seeing his father and obtaining his consent, without which he would have been unable to render her the assistance and service which she desired. Not only did McMillan make use of the defendant's automobile at her suggestion and with her approval, but the trip in its purpose was, under the circumstances, necessarily preliminary to the ride which the defendant desired and proposed to take. It was for her benefit, and in that respect widely differs from cases where a chauffeur for his own purposes deviates from his route or extends his trip beyond the point required in the discharge of his duty to his employer.

The defendant cites two cases which support the proposition that the owner of a horse and carriage or the owner of an automobile is not responsible for damages arising from the carelessness of a borrower who is using the same for his own purposes (Herlihy *v.* Smith, 116 Mass. 265, and Cunningham *v.* Castle, 127 App. Div. 580, 111 N. Y. Supp. 1057). Our conclusion being that McMillan was not a borrower, but was acting as the servant or agent of the de-

fendant and for her benefit, these cases are not applicable to the case before us."

The liability of the owner of an automobile for the negligence of a chauffeur furnished by a garage is noted in the current volume at p. 64.

Master and Servant—Liability to Third Person—Newsboy Throwing Folded Paper.—The appellee in the case of Houston Chronicle Pub. Co. *v.* Lemmon (Tex. Civ. App.), 193 S. W. 347, was sitting upon the porch of No. 2408 La Branch Street, Houston, Texas, when according to her allegations, an employee of the appellant, whose duty it was to deliver papers daily, "in the performance of such duty, twisted one of said papers tightly together so that it formed a compact projectile, which could be thrown to a great distance, and negligently, and with great force threw said paper toward and upon said porch where appellee was sitting, striking her." As a result of the blow appellee was seriously and permanently injured, so she sued the company for damages.

The company pleaded that the paper was delivered in the same manner that it had delivered papers for ten years, and which by long experience has been found to be safe, efficient, and expeditious; that it is well-nigh the universal custom among newspaper managers to have boys move rapidly from one part of the city to another and throw papers into yards or onto the porch or steps of residences, and pleaded that such method of delivery is the only one necessarily available, and that if plaintiff was injured, such injury was the result of an accident against which skill, care, and foresight could not provide, and which was not possible to be foreseen, and the injury and accident was not such that it might necessarily have been expected to have occurred. It requested the court to give a peremptory instruction in its favor, "because the evidence indisputably shows that more than 20,000,000 papers had been delivered in the same manner as the one in question in this suit, without injury following to any one." The court said, "The fact that the appellant had caused 20,000,000 papers to be delivered by boys throwing them into the yards and upon the porches of subscribers, and that such manner of delivery was practically the universal manner of making such deliveries by publishers, and that no injury to any person, similar to that of appellee, had theretofore occurred, so far as known, is not disputed. But such admission is not an admission that to throw a tightly rolled paper, so as to make it a compact body, 75 or 100 feet among and upon women and children, was not an act of negligence. The existing conditions and surroundings at the time of the throwing of such papers we think should be considered in determining whether or not such throwing was negli-